Nos. 82-1822, 82-1930 & 82-1934

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

VICTOR D. QUILICI,
v. *Petitioner,*

VILLAGE OF MORTON GROVE,
*Respondent.*

GEORGE L. REICHERT and ROBERT E. METLER,
v. *Petitioners,*

VILLAGE OF MORTON GROVE,
*Respondent.*

ROBERT STENGL, *et al.*,
v. *Petitioners,*

VILLAGE OF MORTON GROVE,
*Respondent.*

**On Petitions for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit**

## MOTION OF HANDGUN CONTROL, INC., FOR LEAVE TO FILE BRIEF AMICUS CURIAE OPPOSING CERTIORARI AND BRIEF AMICUS CURIAE

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## MOTION OF HANDGUN CONTROL, INC., FOR LEAVE TO FILE BRIEF AMICUS CURIAE OPPOSING CERTIORARI

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Handgun Control, Inc., ("HCI") respectfully moves for leave to file the attached brief *amicus curiae* pursuant to Rule 36 of the Rules of this Court. Counsel for the respondent, Morton Grove, and for petitioner Quilici have consented to the filing;[1] counsel for the other peti-

[1] Their written consents have been filed with the Clerk of this Court.

tioners were asked to consent but did not. This brief is thus filed with the consent of the parties in No. 82-1822; leave to file by motion is sought only in Nos. 82-1930 and 82-1934.

Petitioners seek review of a decision by the Seventh Circuit Court of Appeals upholding the constitutionality of a village ordinance regulating possession of handguns in Morton Grove, Illinois. HCI is a non-profit, non-partisan, public interest organization, with over seven hundred thousand supporters nationwide. Its primary goal is to develop and implement reasonable measures for controlling handgun violence. HCI has members who reside in Morton Grove and who, like the general public, are exposed to an increased risk of death or serious bodily harm as a result of the widespread, largely uncontrolled availability of handguns. HCI has advocated reasonable handgun restrictions before numerous federal, state, and local governmental bodies, and participated in the case below as *amicus curiae* in the Seventh Circuit. HCI therefore has a strong interest both in upholding the challenged ordinance, which is a significant step toward effective handgun regulation, and in judicial recognition of legislators' constitutional power to control handguns.

HCI has participated as *amicus curiae* in a number of cases challenging the validity of local restrictions on private possession of handguns, including *McIntosh v. Washington*, 395 A.2d 744 (D.C. 1978), and this case below. In this connection, and in connection with its work on assisting elected officials in formulating handgun control legislation, HCI has studied the history and meaning of the provisions of the federal constitution that bear on the power of localities to control handguns. Accordingly, HCI believes that it can assist the Court in determining the validity of the challenged ordinance under the federal constitution. HCI is an appropriate party to address this issue in a suit in which national firearms organizations, such as the National Rifle Association and

the Second Amendment Foundation, are substantial participants.[2]

Respectfully submitted,

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July 15, 1983

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[2] Three attorneys from the National Rifle Association are "of counsel" on the Reichert & Metler petition. Counsel for the Stengl petitioners, Don B. Kates, Jr., was retained for this case by the Second Amendment Foundation.

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**On Petitions for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit**

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## BRIEF OF AMICUS CURIAE HANDGUN CONTROL, INC., OPPOSING CERTIORARI

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### INTEREST OF AMICUS CURIAE

Handgun Control, Inc., ("HCI") is a non-profit, non-partisan, public interest organization whose primary goal is to develop and implement reasonable measures for controlling handgun violence. HCI has members who reside in Morton Grove and who, like the general public, are exposed to an increased risk of death or serious bodily injury as a result of the widespread, largely uncontrolled availability of handguns. HCI has advocated reasonable handgun controls before various federal, state, and local governmental bodies, and has a strong interest both in upholding the challenged ordinance and in confirming legislators' constitutional power to control handguns.

HCI has participated as *amicus curiae* in a number of cases challenging local government restrictions on private possession of handguns, including this case below. In this connection, and in connection with its work assisting elected officials in formulating handgun control legislation, HCI has studied the history and meaning of the provisions of the federal constitution that bear on the power of local governments to control handguns. HCI is an appropriate party to address the federal constitutional issues in this suit, particularly in light of the substantial role that national firearms organizations are playing in the case.[1]

## STATEMENT OF THE CASE

The challenged ordinance regulates the possession of machine guns, submachine guns, sawed-off shotguns, and operative handguns in the village of Morton Grove, Illinois. Ordinance No. 81-11.[2] The corporate authorities of Morton Grove singled out these particular types of firearms for special restrictions because "the easy and convenient availability of [these firearms] have increased the potentiality of firearm related deaths and injuries" and because handguns, in particular, "play a major role in the commission of homicide, aggravated assault, and armed robbery, and accidental injury and death." *Id.*

Petitioners do not challenge Morton Grove's decision to regulate the possession of machine guns, submachine guns, or sawed-off shotguns. They do, however, challenge its decision to restrict possession of operative handguns. Possession of such handguns is generally prohibited

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[1] Three attorneys from the National Rifle Association are "of counsel" on the Reichert & Metler petition. Don B. Kates, Jr., counsel for the Stengl petitioners, was retained for this case by the Second Amendment Foundation.

[2] The challenged ordinance also regulates the possession of certain other dangerous weapons and explosive devices. The ordinance, relevant federal constitutional provisions, and certain pertinent English statutes are set forth in an Appendix to this brief.

within the village, subject to a number of specified exceptions, including exceptions for licensed gun clubs, for "gun club members while such members are using their handguns at the gun club premises," and for "[m]embers of the . . . Illinois National Guard or the Reserve Officers Training Corps while in the performance of their official duties." *Id.*

The court below rejected each of petitioners' federal constitutional arguments against the validity of the ordinance. *Quilici v. Morton Grove*, 695 F.2d 261 (7th Cir. 1982). It held (1) that the second amendment does not apply to state and local governments; (2) that, in any event, the second amendment does not protect private possession of handguns; and (3) that the ordinance does not violate the ninth amendment. 695 F.2d at 269-71. It sustained the validity of the ordinance in all respects.

## SUMMARY OF ARGUMENT

This case presents no substantial question requiring the attention of this Court. There is no conflict among the circuits or state courts of last resort on any of the issues that petitioners offer for review. The rulings of the court below were fully consistent with—and, indeed, compelled by—prior, unquestioned decisions of this Court.

The second amendment restricts only the powers of the national government, and not those of state or local governments. This Court and others have uniformly refused to incorporate the limited second amendment right to arms into the fourteenth amendment as a restriction on the states. To treat the second amendment as restricting the states would be inconsistent both with the intentions of the founding fathers and with the limited present-day role of private weapons in national defense.

Even if the second amendment did apply to state and local governments, it still would not prohibit legislative restrictions, such as those contained in the Morton Grove

ordinance, on private possession of handguns. The amendment restricts only governmental actions that significantly impair a state's organized militia. Moreover, the limited right to keep and bear arms that the amendment protects has always been treated as subject to reasonable regulation in the interest of public welfare and safety.

The penumbras of other amendments do not create a constitutional right to possess and use handguns "privately" in defense of the home. This Court and others have refused to recognize any such novel right.

## ARGUMENT

### I. THE SECOND AMENDMENT DOES NOT RESTRICT STATE OR LOCAL GOVERNMENTS.

The second amendment states that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." It was proposed and ratified in response to Anti-Federalist fears that the new federal government might disarm state militias and replace them with a national standing army. Numerous unquestioned decisions by this Court and others support the holding of the court below that this amendment restricts only the powers of the federal government, and does not apply to the states either directly or through the fourteenth amendment.

Thus, in *Presser v. Illinois*, 116 U.S. 252, 265 (1886), this Court held that the second amendment "is a limitation only upon the power of Congress and the National government, and not upon that of the States." *Accord Miller v. Texas*, 153 U.S. 535, 538 (1894); *United States v. Cruikshank*, 92 U.S. 542, 553 (1875). The *Presser* Court unequivocally rejected claims that the "privileges and immunities" or "due process" clauses of the four-

teenth amendment prohibit state regulation of weaponry. 116 U.S. at 266-68.

Neither this Court nor any lower court has ever questioned the soundness of these rulings. This Court has itself described *Presser* as holding that second amendment rights are "not safeguarded against state action by the Privileges and Immunities Clause or other provision of the Fourteenth Amendment." *Malloy v. Hogan*, 377 U.S. 1, 4 n.2 (1964). Moreover, in *Burton v. Sills*, 394 U.S. 812 (1969), this Court dismissed for want of a substantial question an appeal from a holding of the New Jersey Supreme Court that the second amendment does not bar reasonable state regulation of firearms. With the possible exception of one aberrant 1902 ruling by the Idaho Supreme Court,[3] no federal court or state court of last resort has held, since *Presser*, that the second amendment applies to the states. Instead, courts have repeatedly reaffirmed that the second amendment does not apply to the states, either directly or by incorporation into the fourteenth amendment.[4]

The logic behind these decisions is compelling. The second amendment was intended to regulate the relationship between the national government and the states, rather than between the national government and individual citizens. Its "obvious purpose" was "to assure the continuation and render possible the effectiveness of" state

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[3] *In re Brickey*, 8 Idaho 597, 70 P. 609 (1902) (alternative ground for decision; *Presser*, *Miller*, *Cruikshank*, and the history of the second amendment not mentioned or discussed).

[4] *See, e.g., Cases v. United States*, 131 F.2d 916, 921-22 (1st Cir. 1942), *cert. denied*, 319 U.S. 770 (1943); *Application of Atkinson*, 291 N.W.2d 396, 398 n.1 (Minn. 1980); *State v. Amos*, 343 So. 2d 166, 168 (La. 1977); *Commonwealth v. Davis*, 369 Mass. 886, 890, 343 N.E.2d 847, 850 (1976); *State v. Sanne*, 116 N.H. 583, 584, 364 A.2d 630 (1976); *Harris v. State*, 83 Nev. 404, 406, 432 P.2d 929, 930 (1967).

militias, *United States v. Miller*, 307 U.S. 174, 178 (1939),[5] as the events leading up to the adoption of the amendment amply attest.

The delegates to the Constitutional Convention in Philadelphia vigorously debated the proper extent of federal control over state militias.[6] They viewed permitting some degree of federal control as the principal practical alternative to maintaining a substantial standing national army, which at the time was anathema to many Americans.[7] They resolved the issue at the convention by dividing authority over the militia between federal and

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[5] *Accord United States v. Warin*, 530 F.2d 103, 106-07 (6th Cir.), *cert. denied*, 426 U.S. 948 (1976); *United States v. Tot*, 131 F.2d 261, 266 (3d Cir. 1942), *rev'd on other grounds*, 319 U.S. 463 (1943); *Burton v. Sills*, 53 N.J. 86, 95-101, 248 A.2d 521, 525-29 (1968), *appeal dismissed*, 394 U.S. 812 (1969); *Commonwealth v. Davis*, 369 Mass. at 890, 343 N.E.2d at 850.

[6] A. Prescott, *Drafting the Federal Constitution: A Rearrangement of Madison's Notes* 515-25 (1941); Weatherup, *Standing Armies and Armed Citizens: An Historical Analysis of the Second Amendment*, 2 Hastings Const. L.Q. 961, 980-84 (1975); W. Riker, *Soldiers of the States: The Role of the National Guard in American Democracy* 14-16 (1957).

[7] Many colonial Americans had inherited an almost obsessive concern with standing armies from the seventeenth century British, who suffered at the hands of the standing armies of Cromwell and James II. J. Miller, *Origins of the American Revolution* 440 (1943); B. Bailyn, *The Ideological Origins of the American Revolution* 61-63 (1967). This obsession was compounded by American experiences with British troops before and during the Revolution. Bailyn, *id.* at 112-19; Feller & Gotting, *The Second Amendment: A Second Look*, 61 Nw. U.L. Rev. 46, 49-56 (1966). As a result, many state constitutions of the Revolutionary era expressed antipathy towards standing armies, as did the Declaration of Independence. *See, e.g.*, 1 B. Schwartz, *The Bill of Rights: A Documentary History* (1971) [hereinafter cited as "*Schwartz*"] at 235 (Virginia), 266 (Pennsylvania), 278 (Delaware), 282 (Maryland), 287 (North Carolina), 324 (Vermont), 342-43 (Massachusetts), 378 (New Hampshire), 253 (Declaration of Independence).

state governments.[8] A number of Anti-Federalist delegates opposed this compromise, however, and it became a focal point for Anti-Federalist attacks during the ratification process.[9] A major theme of these attacks was that the federal government might, by abuse or non-use of its power over state militias, disarm and destroy them.[10] One result was that a number of states formally proposed that the integrity of those militias be constitutionally protected by recognizing a right to keep and bear arms.[11] The second amendment responded to these fears

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[8] The framers authorized Congress to "provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States . . . ." U.S. Const. art. I, § 8, cl. 16. However, they expressly reserved to the states "the Appointment of the Officers, and the Authority of Training the Militia according to the discipline prescribed by Congress." *Id.* Moreover, they authorized Congress to "provide for calling forth the Militia" only for three specified purposes—"to execute the Laws of the Union, suppress Insurrections and repel Invasions." *Id.*, cl. 15.

[9] *See, e.g.*, A. Prescott, *supra* note 6, at 517-25 (statements of Ellsworth, Dickinson, Sherman, Gerry, and Martin); Levin, *The Right to Bear Arms: The Development of the American Experience*, 68 Chi. Kent L. Rev. 148, 154-59 (1971); Weatherup, *supra* note 6, at 984-93; W. Riker, *supra* note 6, at 16-18; Feller & Gotting, *supra* note 7, at 56-60.

[10] *See, e.g.*, 1 J. Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* (2d ed. 1836) [hereinafter cited as *"Elliot's Debates"*] at 371-72 (Letter from Luther Martin to the Maryland State Legislature); 3 *Elliot's Debates* 47-48, 51-52, 169, 378-81, 384-88, 402, 407, 410-26 (statements of Henry, Mason, Clay, and Grayson at the Virginia Ratification Convention).

[11] *E.g.*, 2 *Schwartz* 842 (Virginia), 912 (New York), 968 (North Carolina); 1 *Elliot's Debates* 335 (Rhode Island). Other proposals for preserving state militias included expressly empowering the states to organize, arm, and discipline their own militias if Congress failed to act, 2 *Schwartz* 843 (Virginia), 969 (North Carolina), and providing that state militias be subject to federal martial law only in time of war, rebellion, insurrection, or invasion,

(footnote continued on next page)

and proposals by safeguarding state militias against disarmament by the federal government.[12] Its historical purpose, expressly reflected in its initial clause, was not to guarantee individual citizens against disarmament by the states,[13] but to protect state militias.

It would be historically incongruous to incorporate this amendment, intended "as a *protection for* the States . . . against possible encroachments by the federal power," [14] into the fourteenth amendment as a *limitation against* the states. It would also be inconsistent with current incorporation doctrine. This Court has incorporated into the fourteenth amendment only those rights that are "necessary to an Anglo-American regime of ordered liberty," *Duncan v. Louisiana*, 391 U.S. 145, 150 n.14 (1968), or that are "fundamental to our free society," *Stanley v. Georgia*, 394 U.S. 557, 564 (1969). In *Lewis v. United States*, 445 U.S. 55, 65 & 65 n.8 (1980), however, this Court explicitly refused to characterize posses-

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2 *Schwartz* 843 (Virginia), 912 (New York), 969 (North Carolina); 1 *Elliot's Debates* 335 (Rhode Island); *see also* U.S. Const. amend. V, which provides that a militia member may be indicted in federal cases only with the consent of a grand jury unless "in actual service in time of War or public danger."

[12] *See* 2 *Schwartz* 1107 (statement of E. Gerry); Feller & Gotting, *supra* note 7, at 61-62; Weatherup, *supra* note 6, at 994-95; Levin, *supra* note 9, at 158-59.

[13] Several states already had constitutional provisions granting their citizenry collectively a qualified right to arms, each in the context of disparaging standing armies. 1 *Schwartz* 266 (Pennsylvania), 287 (North Carolina), 324 (Vermont), 342-43 (Massachusetts). Moreover, a number of state constitutions already declared that a "well-regulated" militia was the "proper," "natural," "safe" or "sure" defense of a "free state" or "free government," each in similar contexts. *Id.* at 235 (Virginia), 278 (Delaware), 282 (Maryland), 378 (New Hampshire). Similar language appeared in several formal state proposals for amending the federal constitution to assure a preference for state militias over standing armies. 2 *Schwartz* 842 (Virginia), 912 (New York), 968 (North Carolina); 1 *Elliot's Debates* 335 (Rhode Island).

[14] *United States v. Tot*, 131 F.2d at 266 (emphasis added).

sion of firearms as a fundamental constitutional right—a result uniformly reached by lower courts as well.[15]

*Lewis* is soundly based on present day realities. Keeping private weapons in support of state militias is not today a fundamental aspect of an Anglo-American regime of ordered liberty—if indeed it ever was.[16] The states have substantially ceded responsibility for their militias to the federal government.[17] For many years Congress has supplied states with money for militia firearms and has provided for federal control over their care and disposition.[18] Private citizens are not expected—or,

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[15] In *Lewis*, this Court held that a statute prohibiting individuals convicted of felonies—including individuals whose convictions were concededly unreliable because obtained without constitutionally required counsel—from possessing *any firearms at all* (18 U.S.C. app. § 1202(c)(3) (1976)) did not "trench upon any constitutionally protected liberties," 445 U.S. at 65 n.8, and therefore needed only a rational basis to survive due process attack. *Accord Marchese v. California*, 545 F.2d 645, 647 (9th Cir. 1976); *United States v. Ransom*, 515 F.2d 885, 891-92 (5th Cir. 1975), *cert. denied*, 424 U.S. 944 (1976); *United States v. Day*, 476 F.2d 562, 567-68 (6th Cir. 1973); *United States v. Synnes*, 438 F.2d 764, 771-72, 771 n.9 (8th Cir. 1971), *vacated on other grounds*, 404 U.S. 1009 (1972); *United States v. Karnes*, 437 F.2d 284, 286-89 (9th Cir.), *cert. denied*, 402 U.S. 1008 (1971).

[16] The founding fathers were by no means unanimously agreed that independent state militias would be effective defense forces. *See, e.g.*, A. Prescott, *supra* note 6, at 516, 519, 522, 523 (statements of C. Pinckney, C.C. Pinckney, Madison, and Randolph at the Constitutional Convention); Weiner, *The Militia Clause of the Constitution*, 54 Harv. L. Rev. 181, 183 (1940) (quoting George Washington).

[17] Weiner, *supra* note 16, at 186-210; W. Riker, *supra* note 6, at 104-17; Rohner, *The Right to Bear Arms: A Phenomenon of Constitutional History*, 16 Cath. U.L. Rev. 53, 72 (1966); *see also* 32 U.S.C. chs. 1, 3, 5 & 7 (1976 & Supp. V 1981).

[18] Department of Justice, "Memorandum Re Federal Firearms Control and the Second Amendment," submitted by Attorney General Katzenbach to the Juvenile Delinquency Subcommittee of the Senate Judiciary Committee, *reprinted in Hearings on the Federal Firearms Act*, 89th Cong., 1st Sess. 41, 44 (1965).

in most cases, even permitted—to use their own firearms in militia service.[19] Today, our society neither recoils from maintaining standing armies nor relies primarily on state militias for its defense.[20]

## II. THE SECOND AMENDMENT DOES NOT PROHIBIT REGULATING PRIVATE POSSESSION OF HANDGUNS.

Even assuming—contrary to reason and this Court's prior holdings—that the second amendment limits the power of state and local governments to regulate private possession of weaponry, the amendment would not prohibit Morton Grove's restrictions on possession of handguns. As the court below concluded, the sole function of the second amendment is to protect well regulated state militias—a function not in any way threatened by the challenged ordinance. Moreover, the limited right to arms that the amendment does protect has always been treated as subject to reasonable regulation in the interest of public welfare and safety.

The language of the second amendment suggests that its purpose is limited to protecting organized and effective state militias. The terms "arms" and "bear arms" have always been associated with organized military activity.[21] Moreover, the amendment's opening clause explains that the purpose of guaranteeing a right to arms is to preserve "well regulated" militias, which are declared to be "necessary to the security of a free State."

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[19] *See, e.g., Commonwealth v. Davis*, 369 Mass. at 888, 343 N.E.2d at 849 ("[O]ur militia . . . is now equipped and supported by public funds"); Feller & Gotting, *supra* note 7, at 68-70.

[20] The Stengl petitioners forthrightly concede that recent militia contributions to national defense have been "minor." Petition at 19.

[21] *See* N. Webster, *An American Dictionary of the English Language* ("arms"—etymology, definitions 1 and 2, and examples; "bear"—definition 3) (1828); 1 *The Oxford English Dictionary* 449 ("arm"—etymology and definitions 1 through 9), 731 ("bear" —definition 6a) (1933).

The history of the second amendment, discussed above, amply sustains this reading. Moreover, this Court has authoritatively embraced it in *United States v. Miller*, 307 U.S. at 178. There this Court established the principle that the second amendment cannot be invoked to defend possession of a firearm without a showing that the "preservation or efficiency of a well regulated militia" is somehow at risk. The circuit courts have repeatedly endorsed and applied this principle in rejecting second amendment defenses in federal firearms prosecutions.[22]

Petitioners have wholly failed to show that the challenged Morton Grove ordinance in any way impairs the organized ("well regulated") Illinois militia. First, that militia is armed and trained at public expense, and does not depend on privately furnished arms for its strength.[23] Second, the ordinance does not even apply to long guns, which account for over two-thirds of all civilian firearms nationwide,[24] and would be more suitable for military use than handguns. Third, the ordinance in any event per-

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[22] *See, e.g., United States v. Oakes*, 564 F.2d 384, 387 (10th Cir. 1977), *cert. denied*, 435 U.S. 926 (1978) *United States v. Warin*, 530 F.2d at 105-08; *United States v. Johnson*, 497 F.2d 548, 550 (4th Cir. 1974) (per curiam); *Cody v. United States*, 460 F.2d 34, 36-37 (8th Cir.), *cert. denied*, 409 U.S. 1010 (1972); *United States v. McCutcheon*, 446 F.2d 133, 135-36 (7th Cir. 1971); *United States v. Johnson*, 441 F.2d 1134, 1136 (5th Cir. 1971); *United States v. Synnes*, 438 F.2d at 772; *United States v. Tot*, 131 F.2d at 266; *Cases v. United States*, 131 F.2d at 922-23. This Court itself relied on *Miller* when it refused, in *Lewis*, to treat possession of firearms as a fundamental constitutional right. 445 U.S. at 65 n.8.

[23] *See, e.g.*, Ill. Rev. Stat. ch. 129 (1979); 32 U.S.C. chs. 1, 5 & 7 (1976 & Supp. V 1981).

[24] United States Comptroller General, Report to the Congress, *Handgun Control: Effectiveness and Costs* 18 (1978); Turley, *Manufacturers' and Suppliers' Liability to Handgun Victims*, 10 N. Ky. L. Rev. 41, 41-42 (1982).

mits possession and use of handguns at gun clubs, thus allowing citizens to become proficient in handgun use and to maintain a stock-pile of handguns for whatever militia application may be imagined.[25] Fourth, the ordinance expressly allows possession of handguns by militia members "while in the performance of their official duties."

In any event, the right to arms has always been treated as "subject to . . . well-recognized exceptions arising from the necessities of the case," including considerations of public welfare. *Robertson v. Baldwin*, 165 U.S. 275, 281-82 (1897).[26] The English Bill of Rights merely established that "the subjects which are protestants may have arms for their defence suitable to their conditions *and as allowed by law*,"[27] thus committing control of firearms to the discretion of the legislature.[28]

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[25] By allowing stockpiles at local gun clubs, the ordinance affirmatively permits the sort of arms cache whose attempted confiscation by the British at Concord, Massachusetts, was the final spark igniting the American Revolution.

[26] *See also United States v. Freed*, 401 U.S. 601, 609 (1971) (possession of inherently dangerous weapons may be criminalized without requiring *scienter*); *Konigsberg v. State Bar*, 366 U.S. 36, 50 n.10 (1961); *Adams v. Williams*, 407 U.S. 143, 150-51 (1972) (Douglas, J., dissenting) ("There is under our decisions no reason why stiff state laws governing the . . . possession of pistols may not be enacted.").

[27] Bill of Rights, 1688, 1 W. & M., sess. 2, ch. 2, *reprinted in* 1 *Schwartz, supra* note 6, at 43 (emphasis added). Blackstone characterized this limited Protestant right to arms as "a public allowance, *under due restrictions*, of the natural right of resistance and self-preservation, *when the sanctions of society and laws are found insufficient to restrain the violence of oppression*." 1 W. Blackstone, *Commentaries on the Laws of England* * 139 (1765) (emphasis added).

[28] In the year that the Bill of Rights was enacted, Parliament passed a statute prohibiting any "papist or reputed papist" who refused to take a loyalty oath from keeping arms without the permission of a justice of the peace. Government Security Act, 1688, 1 W. & M., ch. 15 (*reprinted in* the Appendix to this brief). A sub-

Numerous early English and colonial American statutes regulating the possession and use of weapons similarly contradict the notion of any "absolute" historical right to arms.[29]

The Morton Grove ordinance is sensibly directed at preventing the worst firearms abuses. It is widely accepted that handguns account for a grossly disproportionate share of firearms crime, firearms injury, and firearms death. Long guns, such as rifles and shotguns, are estimated to outnumber handguns well over two to one, nationwide.[30] Yet, handguns account for roughly

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sequent statute entirely denied the right to bear arms in large parts of Scotland. Highlands Act, 1715, 1 Geo., stat. 2, ch. 54 (*reprinted in* the Appendix to this brief). Currently, Great Britain stringently regulates all forms of firearms, particularly handguns. *See generally* Rohner, *supra* note 17, at 62-63; Feller & Gotting, *supra* note 7, at 47-49; Note, *Firearms: Problems of Control*, 80 Harv. L. Rev. 1328, 1342-43 (1967).

[29] For example, the Statute of Northampton, enacted in 1328, provided that no man shall "go nor ride armed by Night nor by Day in Fairs, Markets, nor in the Presence of the Justices or other Ministers nor in no Part elsewhere . . . ." 2 Edw. 3, ch. 3 (*reprinted in* the Appendix to this brief); *see* Rohner, *supra* note 17, at 61. Moreover, the Game Preservation Act of 1670, 22 Car. 2, ch. 25, § 3 (*reprinted in* the Appendix to this brief), essentially forbade common people from possessing guns. Additional English precedents for regulating arms are described in Subcommittee on the Constitution, Senate Judiciary Committee, 97th Cong., 2d Sess., *The Right to Keep and Bear Arms* 1-3 (Comm. Print 1982), while colonial American precedents are described in Levin, *supra* note 9, at 149-50 (citing laws from Massachusetts, Pennsylvania, South Carolina, and Virginia). Precedents for *requiring* citizens to keep certain types of arms (*see, e.g.*, Reichert & Metler petition at 16; Stengl petition at 9 n.15) simply help demonstrate that the treatment of weaponry has always been left to sound legislative discretion. All of the relevant English cases cited by the Reichert & Metler petitioners (at 14) and the Stengl petitioners (at 12 n.26) turned on questions of statutory construction, rather than common law right, and appear to have involved long guns, rather than handguns.

[30] *See supra* note 24.

four out of every five firearms murders,[31] and for still higher proportions of aggravated assaults and robberies in which firearms are used.[32] Handguns are, moreover, the preponderant choice in firearms suicides.[33] It is handgun deaths that make firearms "[s]econd only to motor vehicles as a cause of fatal injury," [34] and it is the handgun that "is the principal weapon of gun misuse." [35]

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[31] FBI, *Uniform Crime Report* 10, 12 (1981); FBI, *Uniform Crime Report* 13 (1980); Comptroller General, *Handgun Control: Effectiveness and Costs, supra* note 24, at 13.

[32] G. Newton & F. Zimring, *Firearms & Violence in American Life: A Staff Report Submitted to the National Commission on the Causes and Prevention of Violence* 49-50 (1969). Handguns are concealable, portable, and unmistakably lethal. These factors make them ideal weapons for determined criminals. Similar factors make them the firearms most likely to be used in spontaneous "crimes of passion," and far more likely to inflict death or serious injury in such crimes than likely alternative weapons, such as knives. Comptroller General, *Handgun Control: Effectiveness and Costs, supra* note 24, at 25-31; Zimring, *Is Gun Control Likely to Reduce Violent Killings?*, 35 U. Chi. L. Rev. 721 (1968). Roughly four out of five firearms confiscated by the police nationwide are handguns, rather than long guns. S. Brill, *Firearms Abuse: A Research and Policy Report* 42-44 (1977).

[33] Handguns are uniquely suited for impulsive suicides. Unlike long guns, they can easily be aimed and discharged at one's own vital regions; and, once fired, they are highly likely to be lethal. Newton & Zimring, *supra* note 32, at 33-34. They are therefore the weapon of choice in firearms suicides. Turley, *supra* note 24, at 55-56 (1982); Browning, *Epidemiology of Suicide: Firearms*, 15 Comprehensive Psychiatry 549 (1974).

[34] United States Surgeon General, *Healthy People: The Surgeon General's Report on Health Promotion and Disease Prevention* 113 (1979). In 1977, about 49,000 people were killed in motor vehicle accidents, and about 32,000 were killed with firearms. *Id.* at 111, 113. Of the 32,000 killed with firearms, half were suicides, two-fifths were homicides, and the remainder were victims of accidents or of unclassified incidents. *Id.* at 113.

[35] Newton & Zimring, *supra* note 32, at 139. *See generally* Fields, *Handgun Prohibition and Social Necessity*, 23 St. Louis U.L.J. 35

There is nothing unreasonable about Morton Grove's decision to subject handguns to relatively strict control. In doing so, Morton Grove has simply joined numerous other jurisdictions that focus their regulatory efforts on handguns, rather than long guns.[36] Such manifestly reasonable legislative actions are not forbidden by the second amendment.[37] Indeed, no federal court has ever struck down a statute or ordinance as repugnant to that amendment.

## III. NO OTHER PROVISION OF THE FEDERAL CONSTITUTION PROHIBITS REGULATING PRIVATE POSSESSION OF HANDGUNS.

The Stengl and Quilici petitioners claim a constitutional right to possess and use handguns "privately," in defense of their homes, under the fourth, ninth, fourteenth, and other, unspecified, amendments, even if the second amendment does not apply.[38] This novel proposition has never been accepted by any circuit court or state

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(1979); Fields, *Guns, Crime and the Negligent Gun Owner*, 10 N. Ky. L. Rev. 141 (1982); Turley, *supra* note 24, *passim*.

[36] Cook & Blose, *State Programs for Screening Handgun Buyers*, 455 Annals of the American Academy of Political and Social Science 80 (1981). All fifty states, plus the District of Columbia, place some restrictions on purchasing, carrying, or owning handguns. Comptroller General, *Handgun Control: Effectiveness and Costs*, *supra* note 24, at 4-7; *see also* Note, *Firearms: Problems of Control*, *supra* note 28, at 1338-43.

[37] *Cf. Whalen v. Roe*, 429 U.S. 589, 597 (1977) ("individual States have broad latitude in experimenting with possible solutions to problems of vital local concern").

[38] Stengl petition at 21-24; Quilici petition at 5-6. The Reichert & Metler petitioners refrain from suggesting that this issue merits review. The court below passed only on the Stengl and Quilici petitioners' ninth and fourteenth amendment claims, and not on their claims under the fourth and other, unspecified, amendments. *Certiorari* on these latter issues is thus particularly inappropriate. *See Tennessee v. Dunlap*, 426 U.S. 312, 314 n.2 (1976); 13 *Moore's Federal Practice* ¶ 817.41, at SC17-42 (2d ed. 1982).

court of last resort, and is directly contradicted by this Court's prior decisions.

In *Stanley v. Georgia*, 394 U.S. 557, 568 (1969), this Court expressly rejected the notion that there is a constitutional right to possess firearms in the home. In the course of holding that the first amendment, as incorporated into the fourteenth, does protect private possession of pornography in the home, this Court explicitly cautioned that "[w]hat we have said in no way infringes upon the power of the State or Federal Government to make the possession of other items, such as narcotics, *firearms*, or stolen goods, a crime." 394 U.S. at 568 n.11 (emphasis added).[39] This Court has since noted that any general federal constitutional "right of privacy" is a limited one, extending—outside the context of freedoms directly protected by the first, fourth, and fifth amendments—only to "matters relating to marriage, procreation, contraception, family relationships, and child rearing and education." *Paul v. Davis*, 424 U.S. 693, 713 (1976).[40] Indeed, in *Lewis v. United States*, 445 U.S. at 65 n.8, this Court explicitly held that prohibiting private possession of firearms does not "trench upon any constitutionally protected liberties."[41]

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[39] *Cf. Crane v. Campbell*, 245 U.S. 304 (1917) (the fourteenth amendment incorporates no right to privately possess intoxicating liquors for personal use). Numerous lower courts have relied on the qualifying sentence in *Stanley* to uphold restrictions on the possession of marijuana and cocaine against "privacy right" challenges. *See, e.g., United States v. Drotar*, 416 F.2d 914, 917 (5th Cir. 1969), *vacated on other grounds*, 402 U.S. 939 (1971); *NORML v. Bell*, 488 F. Supp. 123, 133-34 (D.D.C. 1980); *Louisiana Affiliate of NORML v. Guste*, 380 F. Supp. 404, 407 (E.D. La. 1974), *aff'd*, 511 F.2d 1400 (5th Cir.), *cert. denied*, 423 U.S. 867 (1975).

[40] *See also Whalen v. Roe*, 429 U.S. 589, 598-600 (1977).

[41] *See supra* note 15. Lower courts have routinely upheld imposition of criminal penalties for possessing firearms inside the

In any event, petitioners have not shown that the challenged ordinance unreasonably interferes with any conceivable privacy or self-defense interests they might have. They do not claim that the village has attempted to enforce the challenged ordinance against them in their homes.[42] Nor have they demonstrated that possession of handguns in the home is either a peculiarly private affair, or even an effective self-defense measure.[43] Thus, they have wholly failed to raise any substantial issue suggesting infringement of constitutionally protected privacy or self-defense rights.

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home. *See, e.g., United States v. Three Winchester 30-30 Caliber Lever Action Carbines*, 504 F.2d 1288 (7th Cir. 1974); *United States v. Tot*, 131 F.2d 261; *Commonwealth v. Davis*, 369 Mass. 886, 343 N.E.2d 847.

[42] The privacy/home-defense issue presented by petitioners is thus so abstract and hypothetical as to raise questions about their standing to raise it. *See Babbitt v. United Farm Workers National Union*, 442 U.S. 289, 297-99, 303-05 (1979); *Poe v. Ullman*, 367 U.S. 497 (1961).

[43] Petitioners' argument that permitting handguns in the home will facilitate shooting intruders by itself negates any inference that possession of handguns is a purely private affair. In any case, an intruder is far more likely to steal a home-defense handgun than to be driven off by it, and is far less likely to be seriously injured by it than are the gun owner's family and friends. Newton & Zimring, *supra* note 32, at 62-65; United States Conference of Mayors, *How Well Does the Handgun Protect You and Your Family, passim* (1976). Moreover, the challenged ordinance does not prohibit private possession of all home-defense weapons, or even all home-defense firearms. Instead, it freely permits private possession of all long guns, on the clearly reasonable ground that such firearms are far less frequently abused.

## CONCLUSION

Because this case presents no substantial question requiring resolution by this Court, and because there is no conflict among the circuits or state courts of last resort on any of the issues involved, HCI urges that the petitions for *certiorari* be denied.

Respectfully submitted,

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July 15, 1983

## APPENDIX

## PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

### *THE UNITED STATES CONSTITUTION:*

The Congress shall have Power . . .

> To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years; . . .
>
> To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
>
> To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress . . . . Art. I, § 8, cls. 12, 15, 16.

No State shall, without the Consent of Congress, . . . keep Troops . . . . Art. I, § 10, cl. 3.

The President shall be Commander in Chief of the . . . Militia of the several States, when called into the actual Service of the United States . . . . Art. II, § 2, cl. 1.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. Amend. II.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . . Amend. IV.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising . . . in

the Militia, when in actual service in time of War or public danger . . . . Amend. V.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. Amend. IX.

. . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Amend. XIV, § 1.

*ENGLISH STATUTES:*

*Statute of Northampton, 1328, 2 Edw. 3, ch. 3* [1]

> ITEM it is enacted, That no Man great nor small, of what Condition soever he be, except the King's Servants in his Presence, and his Ministers in executing of the King's Precepts, or of their Office, and such as be in their Company assisting them, and also upon a cry made for Arms to keep the Peace, and the same in such Places where such Acts happen, be so hardy to come before the King's Justices, or other of the King's Ministers doing their Office with Force and Arms, nor bring no Force in affray of the Peace, nor to go nor ride armed by Night nor by Day in Fairs, Markets, nor in the Presence of the Justices or other Ministers nor in no Part elsewhere, upon Pain to forfeit their Armour to the King, and their Bodies to Prison at the King's Pleasure . . . .

[1] 1 *Statutes at Large* 197 (1786).

*Game Preservation Act, 1670, 22 Car. 2, ch. 25 § 3* [2]

An act for the better preservation of the game, and for securing warrens not inclosed, and the several fishings of this realm.

WHEREAS divers disorderly persons, laying aside their lawful trades and employments, do betake themselves to the stealing, taking and killing of conies, hares, pheasants, partridges and other game intended to be preserved by former laws, with guns, dogs, tramels, lowbels, hays and other nets, snares, hare-pipes and other engines, to the great damage of this realm, and prejudice of noblemen, gentlemen and lords of manors and others, owners of warrens: . . .

III. . . . [I]t is hereby enacted and declared, That all and every person and persons not having lands and tenements, or some other estate of inheritance, in his own or his wife's right, of the clear yearly value of one hundred pounds *per annum*, or for term of life, or having lease or leases of ninety-nine years, or for any longer term, of the clear yearly value of one hundred and fifty pounds, other than the son and heir apparent of an esquire, or other person of higher degree, and the owners and keepers of forests, parks, chases or warrens, being stocked with deer or conies for their necessary use, in respect of the said forests, parks, chases or warrens, are hereby declared to be persons by the laws of this realm not allowed to have or keep for themselves, or any other person or persons, any guns, bows, greyhounds, setting-dogs, ferrets, coney-dogs, lurchers, hays, nets, lowbels, hare-pipes, gins, snares, or other engines aforesaid; but shall be and are hereby prohibited to have, keep or use the same.

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[2] 8 *Statutes at Large* 380-81 (1763).

*Government Security Act, 1688, 1 W. & M., ch. 15* [3]

An act for the better securing the government by disarming papists and reputed papists.

* * * *

IV. And for the better securing their Majesties persons and government; be it further enacted and declared, That no papist or reputed papist [refusing to make a specified declaration of loyalty] shall or may have or keep in his house, or elsewhere, or in the possession of any other person to his use, or at his disposition, any arms, weapons, gunpowder, or ammunition (other than such necessary weapons, as shall be allowed to him by order of the justices of the peace, at their general quarter sessions, for the defence of his house or person) and that any two or more justices of the peace, from time to time, by warrant under their hands and seals, may authorize and impower any person or persons in the day-time, with the assistance of the constable or his deputy, or the tythingman, or headborough, where the search shall be (who are hereby required to be aiding and assisting herein) to search for all arms, weapons, gunpowder, or ammunition, which shall be in the house, custody, or possession of any such papist or reputed papist, and seize the same for the use of their Majesties, and their successors . . . .

*Highlands Act, 1715, 1 Geo., stat. 2, ch. 54* [4]

An act for the more effectual securing [sic] the peace of the *Highlands* in *Scotland*.

WHEREAS the custom that has two [sic] long prevailed amongst the *Highlanders of Scotland*, of having arms in their custody, and using and bearing them in travelling abroad in the fields, and at publick meetings, has greatly obstructed the civilizing of the

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[3] 9 *Statutes at Large* 15-17 (1764).

[4] 13 *Statutes at Large* 306-07 (1764).

people within the counties herein after named; has prevented their applying themselves to husbandry, manufactories, trade, and other virtuous and profitable employments; has been the cause of many riots, robberies, and tumults; hath and does tend to disappoint the execution of the law, to the dishonour of government, and unspeakable loss of his Majesty's subjects; has in a peculiar manner been one of the fatal causes of the late unnatural rebellion, and may occasion the like or greater calamity in time to come, if not prevented by a proper remedy: be it therefore enacted . . . [that] it shall not be lawful for any person or persons within [the Highland shires] to have in his or their custody, use or bear broad sword, or target, poynard, whingar, or durk, side-pistol or side-pistols, or gun, or any other warlike weapons, in the fields, or in the way, coming or going to, from, or at any church, market, fair, burials, huntings, meetings, or any other occasion whatsoever, within the bounds aforesaid, or to come into the *Low-Countries* armed, as aforesaid: and in case any of the said person or persons above described, shall have in his custody, use or bear arms, otherwise than in this act directed, every such person or persons so offending . . . shall, for the first offence, forfeit all such arms, and be liable to a fine, not exceeding the sum of forty pounds sterling, and not under the sum of five pounds sterling, and to be imprisoned till payment of the said fine . . . .

*MORTON GROVE ORDINANCE NO. 81-11:*

AN ORDINANCE REGULATING THE POSSESSION OF FIREARMS AND OTHER DANGEROUS WEAPONS

WHEREAS, it has been determined that in order to promote and protect the health and safety and welfare of the public it is necessary to regulate the possession of firearms and other dangerous weapons, and

WHEREAS, the Corporate Authorities of the Village of Morton Grove have found and determined that the easy and convenient availability of certain types of firearms and weapons have increased the potentiality of firearm related deaths and injuries; and

WHEREAS, handguns play a major role in the commission of homocide, aggravated assault, and armed robbery, and accidental injury and death.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MORTON GROVE, COOK COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: The Corporate Authorities do hereby incorporate the foregoing WHEREAS clauses into this Ordinance, thereby making the findings as hereinabove set forth.

SECTION 2: That Chapter 132 of the Code of Ordinances of the Village of Morton Grove be and is hereby amended by the addition of the following section:

"*Section 132.102.* Weapons Control

(A) *Definitions:*

Firearm: "Firearm" means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas; excluding however;

(1) Any pneumatic gun, spring gun or B-B gun which expels a single globular projectile not exceeding .18 inches in diameter.

(2) Any device used exclusively for signalling or safety and required or recommended by the United States Coast Guard or the Interstate Commerce Commission.

(3) Any device used exclusively for the firing of stud cartridges, explosive rivets or similar industrial ammunition.

(4) An antique firearm (other than a machine gun) which, although designed as a weapon, the Department of Law Enforcement of the State of Illinois finds by reason of the date of its manufacture, value, design and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

(5) Model rockets designed to propel a model vehicle in a vertical direction.

Handgun: Any firearm which (a) is designed or redesigned or made or remade, and intended to be fired while held in one hand or (b) having a barrel of less than 10 inches in length or (c) a firearm of a size which may be concealed upon the person.

Person: Any individual, corporation, company, association, firm, partnership, club, society or joint stock company.

Handgun Dealer: Any person engaged in the business of (a) selling or renting handguns at wholesale or retail (b) manufacture of handguns (c) repairing handguns or making or fitting special barrels or trigger mechanisms to handguns.

Licensed Firearm Collector: Any person licensed as a collector by the Secretary of the Treasury of the United States under and by virtue of Title 18, United States Code, Section 923.

Licensed Gun Club: A club or organization, organized for the purpose of practicing shooting at targets, licensed by the Village of Morton Grove under Section 90.20 of the Code of Ordinances of the Village of Morton Grove.

(B) *Possession:*

No person shall possess, in the Village of Morton Grove the following:

(1) Any bludgeon, black-jack, slug shot, sand club, sand bag, metal knuckles or any knife, commonly referred to as a switchblade knife, which has a blade that opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife; or

(2) Any weapon from which 8 or more shots or bullets may be discharged by a single function of the firing device, any shotgun having one or more barrels less than 18 inches in length, sometimes called a sawed off shotgun or any weapon made from a shotgun, whether by alteration, modification or otherwise, if such weapon, as modified or altered has an overall length of less than 26 inches, or a barrel length of less than 18 inches or any bomb, bombshell, grenade, bottle or other container containing an explosive substance of over one-quarter ounce for like purposes, such as, but not limited to black powder bombs and Motolov cocktails or artillery projectiles; or

(3) Any handgun, unless the same has been rendered permanently inoperative.

(C) Subsection B(1) shall not apply to or affect any peace officer.

(D) Subsection B(2) shall not apply to or affect the following:

(1) Peace officers;

(2) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense;

(3) Members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard, while in the performance of their official duties; and

(4) Transportation of machine guns to those persons authorized under Subparagraphs (1) and (2) of this subsection to possess machine guns, if the machine guns are broken down in a non-functioning state or not immediately accessible.

(E) Subsection B(3) does not apply to or affect the following:

(1) Peace officers or any person summoned by any peace officer to assist in making arrests or preserving the peace while he is actually engaged in assisting such officer and if such handgun was provided by the peace officer;

(2) Wardens, superintendents and keeper of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offsense;

(3) Members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard or the Reserve Officers Training Corps while in the performance of their official duties.

(4) Special Agents employed by a railroad or a public utility to perform police functions; guards of armored car companies; watchmen and security guards actually and regularly employed in the commercial or industrial operation for the protection of persons employed and private property related to such commercial or industrial operation;

(5) Agents and investigators of the Illinois Legislative Investigating Commission authorized by the commission to carry such weapons;

(6) Licensed gun collectors;

(7) Licensed gun clubs provided the gun club has premises from which it operates and maintains possession and control of handguns used by its members, and has procedures and facilities for keeping such handguns in a safe place, under the control of the club's chief officer, at all times when they are not being used for target shooting or other sporting or recreation purposes at the premises of the gun club and gun club members while such members, are using their handguns at the gun club premises;

(8) A possession of an antique firearm;

(9) Transportation of handguns to those persons authorized under Subparagraph 1 through 8 of this subsection to possess handguns, if the handguns are broken down in a non-functioning state or not immediately accessible.

(10) Transportation of handguns by persons from a licensed gun club to another licensed gun club or transportation from a licensed gun club to a gun club outside the limits of Morton Grove; provided however that the transportation is for the purpose of engaging in competitive target shooting or for the purpose of permanently keeping said handgun at such new gun club; and provided further that at all times during such transportation said handgun shall have trigger locks securely fastened to the handgun.

(F) *Penalty:*

(1) Any person violating Section B(1) or B(2) of this Ordinance shall be guilty of a misdemeanor and shall be fined not less than $100.00 nor more than $500.000 or incarcerated for up to six months for each such offense.

(2) Any person violating Section B(3) of this Ordinance shall be guilty of a petty offense and shall be fined no less than $50.00 nor more than $500.00 for such offense. Any person violating Section B(3) of this Ordinance more than one time shall be guilty of a misde-

meanor and shall be fined no less than $100.00 nor more than $500.00 or incarcerated for up to six months for each such offense.

(3) Upon conviction of a violation of Section B(1) through B(3) of this Ordinance any weapon seized shall be confiscated by the trial court and when no longer needed for evidentiary purposes, the court may transfer such weapon to the Morton Grove Police Dept. who shall destroy them.

(G) *Voluntary Delivery to Police Department:*

(1) If a person voluntarily and peaceably delivers and abandons to the Morton Grove Police Dept. any weapon mentioned in Sections B(1) through B(3), such delivery shall preclude the arrest and prosecution of such person on a charge of violating any provision of this Ordinance with respect to the weapon voluntarily delivered. Delivery under this section may be made at the headquarters of the police department or by summoning a police officer to the person's residence or place of business. Every weapon to be delivered and abandoned to the police department under this paragraph shall be unloaded and securely wrapped in a package and in the case of delivery to the police headquarters, the package shall be carried in open view. No person who delivers and abandons a weapon under this section shall be required to furnish identification, photographs or fingerprints. No amount of money shall be paid for any weapon delivered or abandoned under this paragraph.

(2) Whenever any weapon is surrendered under this section, the police department shall inquire of all law enforcement agencies whether such weapon is needed as evidence and if the same is not needed as evidence, it shall be destroyed.

(H) All weapons ordered confiscated by the court under the provision of Section F(3) and all weapons received by the Morton Grove Police Department under and

by virtue of Section G shall be held and identified as to owner, where possible, by the Morton Grove Police Department for a period of five years prior to their being destroyed.

(I) *Construction:*

Nothing in this Ordinance shall be construed or applied to necessarily require or excuse non compliance with any provision of the laws of the State of Illinois or to the laws of the United States. This Ordinance and the penalties proscribed for violation hereof, shall not supersede, but shall supplement all statutes of the State of Illinois or of the United States in which similar conduct may be prohibited or regulated.

(J) *Severability:*

If any provisions of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this Ordinance and the applicability of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(K) The provisions of this Ordinance shall take effect ninety (90) days from and after its passage, approval and publication in pamphlet form according to law."

SECTION 3: That this Ordinance shall be published in pamphlet form. Said pamphlet shall be received as evidence of the passage and legal publication of this Ordinance.